

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New England Power Generators Association, Inc)	
)	
v.)	Docket No. EL14-7-000
)	
ISO New England Inc.)	

**NOTICE OF INTERVENTION AND PROTEST OF
THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

Pursuant to Rules 211 and 214(a)(2) of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“FERC” or “Commission”), the Commission’s November 1, 2013 Notice of Complaint, and the Commission’s November 19, 2013 “Notice of Extension of Time,” the Department of Public Utilities of the Commonwealth of Massachusetts (“MA DPU”) hereby files its Notice of Intervention and Protest in response to the Complaint and Request for Fast Track Processing filed by the New England Power Generators Association, Inc. (“NEPGA”) against ISO New England Inc. (“ISO-NE”) on October 31, 2013 (the “Complaint”).²

The MA DPU respectfully asks the Commission to dismiss NEPGA’s Complaint because NEPGA has not met its burden under Section 206 of the Federal Power Act³ of proving that the current rules are unjust and unreasonable and that its proposed revisions to the

¹ See 18 C.F.R. §§ 385.211 (Protests) and 385.214(a)(2) (Intervention).

² Complaint of the New England Power Generators Association, Inc. and Request for Fast Track Processing, Docket No. EL14-7-000 (filed Oct. 31, 2013).

³ 16 U.S.C. § 824e (2012).

ISO-NE Tariff⁴ are just and reasonable.⁵ In support of this Protest, the MA DPU incorporates by reference, adopts, and joins in the arguments set forth by the New England States Committee on Electricity (“NESCOE”) in its Motion to Intervene and Protest (“Protest”) filed separately on this date.⁶

I. INTERVENTION

The MA DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to consumers. Massachusetts General Laws c. 164, § 76 et seq. Therefore, the MA DPU is a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, the MA DPU hereby intervenes in this proceeding pursuant to Rule 214(a)(2).

II. COMMUNICATIONS

The MA DPU requests that the individuals identified below be placed on the Commission’s official service list in this proceeding and that all communications related to this filing and future filings in this proceeding should be directed to:

⁴ Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

⁵ *See Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009), *quoting Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

⁶ Motion to Intervene and Protest of the New England States Committee on Electricity, Docket No. EL14-7-000 (filed Nov. 27, 2013).

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III. BACKGROUND

On October 31, 2013, NEPGA filed a complaint pursuant to Sections 206 and 306 of the Federal Power Act requesting that the Commission determine that the provisions of the ISO-NE Tariff that set capacity prices during circumstances termed Insufficient Competition and Inadequate Supply and the Tariff rules known as the Capacity Carry Forward Rule, each of which is a component of the Forward Capacity Market (“FCM”) administered by ISO-NE, are creating unreasonable and unduly discriminatory price disparities between new and existing capacity resources. As part of the complaint, NEPGA proposed revisions to the Tariff and requested that the Commission find these revisions just and reasonable. Because NEPGA would like its proposed rules in place in time for the upcoming eighth Forward Capacity Auction (“FCA 8”), NEPGA also requested Fast-Track processing of its Complaint.

By their design and intention, NEPGA’s proposed revisions would raise the prices paid to existing resources under Insufficient Competition and Inadequate Supply conditions or if the Capacity Carry Forward Rule was triggered.

IV. PROTEST

The MA DPU incorporates by reference, adopts, and joins in the arguments set forth by NESCOE in its Protest and the accompanying prefiled testimony of James F. Wilson filed

separately this day. As NESCOE argues in its Protest, there are several reasons for the Commission to dismiss NEPGA's Complaint. The MA DPU's primary concern is that NEPGA is unilaterally proposing modifications to the administrative rules for capacity prices that would cost New England ratepayers billions of dollars without the benefit of a full stakeholder process to assess the range of options and weigh the consequences of the revisions. NEPGA's proposed modifications to the Insufficient Competition rule could result in costs to New England consumers as high as almost three billion dollars more than under the current FERC-approved rules annually, if the rule is triggered in FCA 8.⁷ In the event that the Insufficient Competition and Inadequate Supply rules are not triggered, NEPGA's proposed change for the Capacity Carry Forward rule would increase the cost of capacity to consumers in the NEMA/Boston Capacity Zone by one billion dollars over four years.⁸ These quantifiable costs are in addition to the other consequences of accepting NEPGA's proposals, which include, among other things, undesired market behavior and interference with any proposed performance incentives.

The MA DPU agrees with NESCOE that NEPGA has failed to demonstrate that the current rules, which NEPGA did not seek rehearing of when they were approved less than a year ago, are unjust and unreasonable nor that there has been a change in circumstances that would warrant a review of the rules now. In addition, NEPGA has failed to demonstrate that its proposed revisions are just and reasonable. In the event that the Commission finds that some changes to the FCM rules are warranted, the MA DPU asserts that there has not been

⁷ NESCOE Protest at 9 n.25 citing Wilson Testimony at 40.

⁸ *Id.*

sufficient scrutiny and in-depth analysis regarding this particular proposal.⁹ The MA DPU firmly believes that a meaningful opportunity for states and stakeholders to discuss the range of potential solutions is essential, particularly given the impact on New England ratepayers.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the MA DPU hereby files this Notice of Intervention and respectfully requests that the Commission recognize the MA DPU as an intervener in this proceeding, with all rights attendant thereto. In addition, the MA DPU respectfully requests that the Commission consider its comments and those filed by NESCOE in its Protest in this proceeding.

Respectfully submitted,
MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

/s/ Jennifer M. Murphy
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Date: November 27, 2013

⁹ See Minutes of September 10 and 11, 2013 Markets Committee Meeting, at 7-8 (discussion of whether meeting rules allowed for a NEPGA member's proposal of these revisions to be voted on only two weeks after it was first presented), available at http://www.iso-ne.com/committees/comm_wkgrps/mrks_comm/mrks/mins/index.html.

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, Massachusetts on this 27th day of November, 2013.

/s/ Jennifer M. Murphy
Jennifer M. Murphy